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No. 238.

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CHARLES ELMORE

In the Supreme Court of the United States

OCTOBER TERM, 1929.

STATE OF OHIO, EX REL.
PAULINE WADSWORTH,

Appellant,

vs.

JOHN A. ZANGERLE, Auditor of Cuyahoga County,
THE BOARD OF PARK COMMISSIONERS of
THE METROPOLITAN PARK DISTRICT IN CLEVELAND,
HARRY M. FARNSWORTH, WARREN S. HAYDEN, LOUIS E.
MOSES, WM. A. STINCHCOMB, and THE UNION TRUST
COMPANY, a Corporation,

Appellees.

APPELLANT'S STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

GEORGE D. HILE and
SNYDER, HENRY, THOMSEN, FORD & SEAGRAVE,
914 Williamson Bldg., Cleveland, Ohio,
Attorneys for Appellant.

No. 238.

In the Supreme Court of the United States

October Term, 1929.

State of Ohio, ex rel.
Pauline Wadsworth,

Appellant,

vs.

John A. Zangerle, Auditor of Cuyahoga County,
The Board of Park Commissioners of
The Metropolitan Park District in Cleveland,
Harry M. Farnsworth, Warren S. Hayden, Louis E.
Moses, Wm. A. Stinchcomb, and The Union Trust
Company, a Corporation,

Appellees.

APPELLANT'S STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

George D. Hile and
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OCTOBER TERM, 1929.

STATE OF OHIO, EX REL.
PAULINE WADSWORTH,
Appellant,

VS.

JOHN A. ZANGERLE, Auditor of Cuyahoga County,
THE BOARD OF PARK COMMISSIONERS of
THE METROPOLITAN PARK DISTRICT IN CLEVELAND,
HARRY M. FARNSWORTH, WARREN S. HAYDEN, LOUIS E.
MOSES, WM. A. STINCHCOMB, and THE UNION TRUST
COMPANY, a Corporation,
Appellees.

APPELLANT'S STATEMENT OF BASIS OF JURISDICTION OF THIS COURT.

(a) **Statutory Provisions Sustaining the Jurisdiction.**—U. S. Code, Title 28, §237, concerning writs of error from state courts of last resort, as modified by §861-a (Act of January 31, 1928, Chap. 14, 45 Stats. 54) substituting appeals for writs of error, and §861-b (Act of April 26, 1928, Chap. 440, 45 Stats. 466) making applicable to such appeals the statutes regulating the right to a writ of error and the practice in relation thereto, afford the statutory basis of the jurisdiction here invoked.

(b) **Dates of Judgment Sought to be Reviewed and of Application for Appeal, with References to Record.**—The date of the affirmance by the Supreme Court of Ohio of the

judgment of the Court of Appeals repeating that rendered by the Court of Common Pleas of Cuyahoga County, Ohio, herein, is March 27, 1929 (Record, not yet printed, p. 18); and the date of the overruling by the Supreme Court of Ohio of appellant's motion to vacate said judgment of affirmance and to substitute therefor an entry of judgment for plaintiff in error, appellant here, is June 5, 1929 (R. 18); both of which judgments are sought to be reviewed here. The date on which application for the appeal was presented and allowed is June 13, 1929 (R. 18).

(c) **Showing that the Nature of the Case and of the Rulings Below are within said Jurisdictional Provisions, with References to Record.**—The suit below challenged the validity of the Park District Acts (General Code of Ohio, Secs. 2976-1 to 2976-10i, inclusive), passed by the General Assembly March 6, 1917 (107 Ohio Laws, 65), and April 9, 1919 (108 id., Part 2, 1097), upon the ground, among others, that they denied to the taxpayers of said district, including the relator, the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution (R. 72, 78) and were otherwise unconstitutional (R. 72, 77), in that said acts purport to delegate to the Probate Judge of any county in Ohio the power of creating and enlarging such park district within and beyond his county and of appointing commissioners of such district (R. 72, 74), and further delegate to such non-elective commissioners discretionary power to levy taxes (R. 73, 75), to appoint a constabulary and to enact penal measures effective within and adjacent to such districts (R. 76), and also subject the taxpayers within the district to the financial burden of acquiring and maintaining lands outside of it (R. 75).

The case was first tried in the Court of Common Pleas and judgment on the pleadings rendered for defendants. On appeal to the Court of Appeals it was then tried *de novo*, and judgment again rendered for defendants, with separate

findings of fact and conclusions of law reciting that said sections of the General Code "are in all respects valid and not in violation of the Constitution of Ohio or the Constitution of the United States," and on error in the Supreme Court of Ohio a judgment of affirmance was entered, the journal entry, however, reciting (R. 19) that

> "it appearing that five members of this Court (Robinson, Jones, Matthias, Day and Allen, *JJ.*) are of the opinion that Sections 2976-4, 2976-5, 2976-10, 2976-10c, 2976-10e, 2976-10i of the General Code of Ohio are unconstitutional; that two members (Marshall, *C.J.* and Kinkade, *J.*) are of the opinion that said sections are not repugnant to any constitutional provision; that the Court of Appeals held the said statutes constitutional and that in such cases the Constitution of Ohio requires a concurrence of all but one of the members of the Supreme Court to declare a law unconstitutional, it is ordered and adjudged that the judgment of the said Court of Appeals be and the same hereby is affirmed."

Thereupon the appellant, as plaintiff in error in said Supreme Court of Ohio, filed there an application for a rehearing and motion (which said court overruled) to vacate said judgment of affirmance and for judgment for plaintiff in error, etc., upon the grounds, among others, of repugnancy of the said provision in Section 2 of Article IV of the Constitution of Ohio, in its practical operation and effect as illustrated in this case (and elaborated in that of *Board of Education of Columbus v. Columbus*, 118 Ohio State, 295, at pages 296, 298 and 306, showing how, by the same vote of the same judges at the same time in different cases involving the validity of the same statute, such statute is arbitrarily and capriciously made valid in some parts and invalid in other parts of the state), to and in conflict with the Constitution of the United States, including the equal protection and due process clauses of Section 1 of the

Fourteenth Amendment and the provision relating to republican form of government in Section 4 of Article IV, as follows (R. 28):

> "*Fourthly.* The judgment here denies to plaintiff in error, in the construing of this Act and the disposing of this cause, the equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment of the Constitution of the United States, which the amended petition expressly invoked in respect to the unequal operation of the Act in subjecting (among its other inequalities) the taxpayers within the district to the financial burden of acquiring and maintaining lands outside of it, and the same constitutional guaranty is now further invaded by the rendering of judgment against this plaintiff in error by the concurrence of a minority—less than a quorum—of this Court upon said Federal question, and by the Court's failing to state in its journal entry that such Federal question was presented and was so adjudicated by such minority.
>
> "*Fifthly.* The entering by this Court of a minority judgment upholding the constitutionality of a law which the judgment of the Court of Appeals has sustained, when a contrary judgment by another Court of Appeals may at the same time be affirmed here by the same vote, is a peculiarity of the Ohio Constitution and of the judicial structure of this State, which necessarily denies to litigants the equal protection of the laws as guaranteed by Section 1 of the Fourteenth Amendment to the Federal Constitution above cited, and by Section 4 of Article 4 of the same instrument which assures to each state a republican form of government."

See "Statement of Points to be Relied on by Appellant," heretofore filed herein.

(d) **Citation of Cases Sustaining the Jurisdiction.**

Mallett v. North Carolina, 181 U. S. 589;
Truax v. Corrigan, 257 U. S., 312;
Bowman (*Missouri*) *v. Lewis,* 101 U. S., 22;

Gunn v. Berry, 15 Wallace, 610;
People v. W. U. Tel. Co., 70 Colo., 90;
California Adjustment Col. v. Atchison, etc., R. R. Co., 179 Cal., 140;
Meriwether v. Garrett, 102 U. S., 472, at p. 515;
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Clapp v. Ely, 27 N. J. L., 622;
Butler v. Perry, 240 U. S., 328, at p. 333;
American Land Co. v. Zeiss, 219 U. S., 47, at p. 66.

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